



## **Federal Highway Administration**

### **23 CFR Part 1**

**[RIN 2125-AG04]**

#### **Diversion of Highway Revenues; Removal of Obsolete Regulation**

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** Through this final rule, FHWA will remove a regulation from the CFR that has been rendered obsolete by the passage of subsequent legislation. The FHWA believes that because the underlying statutory authority for this regulation has substantially changed since adopted, this final rule eliminates any confusion that may be caused by its existence in the CFR.

**DATES:** This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Steven Frankel, Office of Budget (HCFB-10), (202) 366-9649, or via email at [Steven.Frankel@dot.gov](mailto:Steven.Frankel@dot.gov) or Adam Sleeter, Office of the Chief Counsel, (202) 366-8839, or via email at [Adam.Sleeter@dot.gov](mailto:Adam.Sleeter@dot.gov). Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access and Filing**

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site at: [www.federalregister.gov](http://www.federalregister.gov) and the Government Publishing Office's Web site at: [www.GovInfo.gov](http://www.GovInfo.gov).

## **Background**

The regulation at 23 CFR 1.28 is obsolete. It relates to the implementation of a provision of law that was repealed in 1998. Prior to 1998, 23 U.S.C. 126 contained a provision that required the reduction of Federal-aid Highway Program apportionments (funds distributed by statutory formula) to a State if the State diverted State vehicle-related fees and taxes for uses other than construction, improvement, and maintenance of highways. This provision of law was repealed by Section 1226(d) of Public Law (Pub. L.) 105-178 ("Transportation Equity Act for the 21st Century" or TEA-21), as added by Pub. L. 105-206, title IX, sec. 9003(a), July 22, 1998, 112 Stat. 837 ("TEA-21 Restoration Act"). Since the enactment of the TEA-21 authorization in 1998, 23 U.S.C. 126 (or a predecessor transfer provision)<sup>1</sup> has governed the ability of States to transfer their apportioned funds among programs.

All substantive requirements and provisions of 23 CFR 1.28 have been superseded by subsequent law. Therefore, the regulation at 23 CFR 1.28 is obsolete and may be removed without adversely impacting the ability of FHWA or the State or local transportation departments to carry out the Federal-aid highway program.

## **Rulemaking Analyses and Notices**

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the prior notice and opportunity for public comment requirements if it finds, for good cause, that the requirements are impracticable, unnecessary, or contrary to the public interest. The issuance of this rule without prior notice and opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(3)(B). Seeking public

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<sup>1</sup> In 1998, section 1310(a) of TEA-21 located the transfer authority in 23 U.S.C. 110(a). In 1999, section 102(a) of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, Dec. 9, 1999, 113 Stat. 1752) redesignated that provision and moved the transfer authority to 23 U.S.C. 126.

comment is unnecessary. This action is merely a ministerial action to remove a regulation from the CFR that has been rendered obsolete by the passage of subsequent legislation, and the removal of this regulation will have no substantive impact. The FHWA believes that, because the underlying statutory authority for this regulation has substantially changed since adopted, this final rule eliminates any confusion that may be caused by its existence in the CFR. For these reasons, FHWA does not anticipate receiving meaningful comments on a proposal to remove the regulation from the CFR and finds good cause to forgo notice and an opportunity for public comment.

The APA also allows agencies, upon finding of good cause, to make a rule effective immediately upon publication (5 U.S.C. 553(d)(3)). For the same reasons discussed above, the Agency believes good cause exists for making this action effective immediately upon publication.

**Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures**

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of Executive Order (EO) 12866 or within the meaning of DOT regulatory policies and procedures. This is a ministerial action to remove an obsolete regulation from the CFR. The removal of this regulation will have no substantive impact or economic impact; therefore, a full regulatory evaluation is not necessary.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Public Law 96-354; 5 U.S.C. 601-612), FHWA has evaluated the effects of this final rule on small entities, such as local governments and businesses. This is a ministerial action to remove an obsolete regulation from the CFR. Administration of Federal-aid highway construction

projects by small entities will not be affected by the deletion. Therefore, FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

### **Unfunded Mandates Reform Act of 1995**

The FHWA has determined that this rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, March 22, 1995, 109 Stat. 48). The actions in this final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$155 million or more in any 1 year (2 U.S.C. 1532) for either State, local, and Tribal governments in the aggregate, or by the private sector. In addition, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

### **Executive Order 13132 (Federalism Assessment)**

The FHWA has analyzed this final rule in accordance with the principles and criteria contained in EO 13132. Since is a ministerial action to remove an obsolete regulation from the CFR, FHWA has determined that this rule does not have federalism implications. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States’ ability to discharge traditional State governmental functions.

### **Executive Order 12372 (Intergovernmental Review)**

The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program. State and local governments are not directly affected by this action because it is a ministerial action to remove an obsolete regulation from the CFR.

## **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this final rule does not contain collection of information requirements for the purposes of the PRA.

## **National Environmental Policy Act**

The FHWA has analyzed this final rule for the purposes of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that this action does not have any effect on the quality of the human and natural environment because it is a ministerial action to remove an obsolete regulation from the CFR.

## **Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this final rule under EO 13175 and believes that it will not have substantial direct effects on one or more Indian Tribes, does not impose substantial direct compliance costs on Indian Tribal governments, and does not preempt Tribal law. This rule does not impose any direct compliance requirements on Indian Tribal governments nor does it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

## **Executive Order 12898 (Environmental Justice)**

EO 12898 requires that each Federal Agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. FHWA has determined that this rule does not raise any environmental justice issues.

## **Regulation Identifier Number**

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 1**

Grant programs—transportation, Highways and roads.

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**PART 1— [REMOVED AND RESERVED]**

In consideration of the foregoing, and under the authority of 23 U.S.C. 315, 23 CFR 1.28, FHWA removes and reserves 23 CFR part 1.

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